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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,007	08/07/2001	Lantz S. Crawley	3031/0J066	1941

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EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 01/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,007

Applicant(s)

CRAWLEY ET AL.

Examiner

Kimberly S Smith

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 17-21 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 2 and 3 recite the limitation "the prescribed criterion" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 6, 7, 9, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Nicosia et al., US Patent 6,088,949 (Nicosia).

Nicosia discloses an insect control member comprising a substrate (142) having a thickness and flexural modulus (inherent in all materials) satisfying a predetermined criterion and to optimally radiate pressure waves at a prescribed frequency that mimics the heartbeat of an animal and an insect-interactive material supported on the substrate (column 11, line 61-62 in which it is stated the substrate is coated).

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Regarding claims 2 and 3, the invention disclosed by Nicosia is comprised of a substrate having a thickness and a flexural modulus (as all materials inherently have). Given that a material with given properties was chosen for use with the invention and that the thickness and flexural modulus are inherent in a given material, it is therefore disclosed that the material was chosen based upon a prescribed criterion between a prescribed criterion between the thickness and the flexural modulus.

Regarding claim 6, Nicosia discloses a thickness that satisfies a prescribed criterion (i.e. deformability) that is defined by the material selected for the substrate.

Regarding claim 7, Nicosia discloses the substrate being a predetermined polymer wherein the predetermined polymer has a range of thickness that satisfy the prescribed criterion.

Regarding claim 9, Nicosia discloses the substrate including a front surface that defines a central insect-interactive zone and a peripheral sealing zone that surrounds the insect-interact zone (defined as the area within the clamp frame 160).

Regarding claim 12, Nicosia discloses the insect-interactive material is sticky (column 11, line 63)

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 4, 5, 8, 13, 14 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicosia et al., US Patent 6,088,949 (Nicosia).

Nicosia discloses the invention as claimed including the substrate is comprised of a deformable material such as plastic. However, Nicosia does not positively disclose the use of polyethylene or a thickness of at least 0.5 mils. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use polyethylene as the plastic disclosed by Nicosia, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. It would have further been obvious to use a thickness of about 0.5 mils since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Regarding claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use polyethylene, polypropylene, polyester, polycarbonate, PVC or polystyrene as the plastic disclosed by Nicosia, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

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Regarding claim 8, Nicosia discloses the invention substantially as claimed. However, Nelson does not disclose the polymer is an unfilled homopolymer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an unfilled homopolymer as the material disclosed by Nicosia, since it has been held to be within the general skill of a worker in the art to select a known material (reference Greenberg, US 4,202,129 for basis of a known material in the art) on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claims 13 and 14, Nicosia discloses the invention substantially as claimed. However, Nicosia does not positively disclose the insect-interactive material comprises an oil-based composition or more particularly being a mineral oil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an oil based substance including mineral oil as the insect-interactive substance, since it has been held to be within the general skill of a worker in the art to select a known material (reference Stout US Patent 4,411,093 for the basis of a known insect-interactive material in the art) on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claims 17-21, Nicosia discloses the invention substantially as claimed. However, Nicosia does not positively state that the thickness of the substrate is at least about 0.5 mils or has a range of material thickness bounded at the upper end to 10 mils. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a thickness of substrate of at least 0.5 mils and bounded at the upper end of a range to 10 mils, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

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9. Claims 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicosia as applied to claim 1 in view of Flashinski et al., US Patent 6,360,477 (Flashinski).

Nicosia discloses the invention as claimed including a central folding axis (as all objects have a central axis about which they may be folded), the substrate being foldable (as Nicosia discloses that the substrate is deformable and thereby capable of folding). However, Nicosia does not disclose that the substrate being folded in a stowed position. Flashinski teaches within the same field of endeavor that it is known in the art to fold a substrate upon itself in a stowed position so as to trap and maintain the active substance until the time the substrate is ready for use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of Flashinski with the device of Nicosia in order to maintain the full strength of the insect interactive material of Nicosia until the substrate is used in operation. Flashinski further discloses the use of a sealing zone (36 and 38) in order to maintain the substrate in the folded position until use. It would have further been obvious to use the teaching of Flashinski's sealing zones in order to maintain the substrate in a stowed position and to maintain the strength of the insect interactive material until use.

Allowable Subject Matter

10. Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

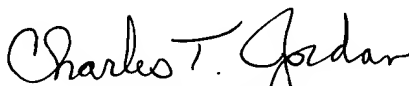
11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.


CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600